

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JESUS OROZCO ARROYO,

No. 4:19-CV-00490

Petitioner,

(Judge Brann)

v.

(Chief Magistrate Judge Schwab)

WARDEN CLAIR DOLL, *et al.*,

Respondents.

**ORDER**

**NOVEMBER 19, 2019**

Jesus Orozco Arroyo, an individual currently detained by the United States Department of Homeland Security, Immigration and Customs Enforcement, filed this 28 U.S.C. § 2241 petition challenging his order of removal from the United States and seeking a bond hearing pending the completion of his removal proceedings.<sup>1</sup> After several rounds of supplemental briefing,<sup>2</sup> on October 10, 2019, Chief Magistrate Judge Susan E. Schwab issued a Report and Recommendation recommending that this Court grant in part and deny in part Arroyo's petition.<sup>3</sup>

Chief Magistrate Judge Schwab recommends denying Arroyo's claims related to his order of removal.<sup>4</sup> However, relying on the United States Court of Appeals

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<sup>1</sup> Doc. 1.

<sup>2</sup> Docs. 6, 7, 9, 11, 15.

<sup>3</sup> Doc. 17.

<sup>4</sup> *Id.* at 9-10.

for the Third Circuit's decisions in *Diop v. ICE/Homeland Security*<sup>5</sup> and *Chavez-Alvarez v. Warden York Cty. Prison*,<sup>6</sup> Chief Magistrate Judge Schwab recommends granting the petition to the extent that Arroyo seeks a bond hearing.<sup>7</sup> No timely objections were filed to this Report and Recommendation.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.<sup>8</sup> Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.<sup>9</sup> After reviewing the record, the Court finds no error—clear or otherwise—in Chief Magistrate Judge Schwab's conclusion this Court lacks jurisdiction to consider a challenge to Arroyo's order of removal, or in the recommendation that this Court direct an immigration judge to conduct a bond hearing in accordance with *Chavez-Alvarez*. Consequently, **IT IS HEREBY ORDERED** that:

1. Chief Magistrate Judge Susan E. Schwab's Report and Recommendation (Doc. 17), is **ADOPTED**;

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<sup>5</sup> 656 F.3d 221, 233 (3d Cir. 2011).

<sup>6</sup> 783 F.3d 469, 478 (3d Cir. 2015).

<sup>7</sup> Doc. 17 at 11-22.

<sup>8</sup> Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

<sup>9</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.

2. Respondents Simona Flores, Ronald D. Vitiello, and Kirstjen Nielsen are **DISMISSED** from this action;
3. Arroyo's 28 U.S.C. § 2241 petition (Doc. 1) is **DISMISSED** in part and **GRANTED** in part. The petition is dismissed for lack of jurisdiction to the extent that it seeks review of Arroyo's underlying order of dismissal, but granted to the extent that Arroyo seeks a bond hearing; and
4. Within twenty-one days of the date of this Order, the Government **SHALL PROVIDE** Arroyo a bond hearing at which it "bears the burden of proving that his continued detention is necessary to fulfill the purposes of the detention statute."<sup>10</sup>
5. The Clerk is directed to close this case.

BY THE COURT:

*s/ Matthew W. Brann*  
Matthew W. Brann  
United States District Judge

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<sup>10</sup> *Diop*, 656 F.3d at 233.